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**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON**

STACEY & JACOBSEN, PLLC,

Plaintiff,

v.

UNITED STATES OF AMERICA,
DEPARTMENT OF HOMELAND
SECURITY, AND THE UNITED STATES
COAST GUARD

Defendants.

Case No.

**COMPLAINT FOR VIOLATION OF
THE FREEDOM OF INFORMATION
ACT (FOIA)**

Come now the Plaintiff, Stacey & Jacobsen, PLLC, and, for its complaint against the Defendants, alleges as follows:

I. INTRODUCTION

1.1 This case arises out of the United States Coast Guard (“USCG”) repeated failures to comply with the Freedom of Information Act (FOIA).

II. JURISDICTION & VENUE

2.1 Plaintiff incorporates paragraph 1.1 as if pled verbatim herein.

2.2 This Court has subject matter jurisdiction pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1331.

2.3 Venue is proper under 28 U.S.C. § 1391(e) and 5 U.S.C. § 331(a)(4)(B).

III. PARTIES

3.1 Plaintiff incorporates paragraphs 1.1 through 2.3 as if pled verbatim herein.

3.2 Plaintiff Stacey & Jacobsen, PLLC, is a Washington limited liability corporation with its principal place of business in King County, Washington. Plaintiff is a law firm that represents clients on a variety of matters, including maritime personal injuries.

3.3 Defendant United States of America is a sovereign nation.

3.4 Defendant Office of Homeland Security is an agency of the United States of America.

3.5 Defendant USCG is an agency of the United States of America, a branch of the United States Armed Forces, and operates under the United States Department of Homeland Security within the meaning of 10 U.S.C. § 101(a)(4).

IV. FACTS

4.1 Plaintiff incorporates paragraphs 1.1 through 3.5 as if pled verbatim herein.

4.2 Plaintiff seeks information on behalf of its clients Kevin and Jacob Gregory who were involved in a marine casualty which occurred when the Tug DAUBY collided with recreational vessel WN2263SJ in the Columbia River near Longview, Washington, on March 21, 2018, at approximately 0736 local time.

4.3 On or about June 4, 2019, plaintiff submitted a FOIA request by correspondence dated June 3, 2019 to the Coast Guard via email at the following address:

Via Email
EFOIA@uscg.mil

COMMANDANT (CG-611)
ATTN FOIA OFFICER

2703 Martin Luther King Jr. Ave SE
Washington DC 20593-7710

4.4 The information sought in the FOIA request was “all documents in the Coast Guard’s possession with regard to the above-described casualty. This includes, but is not limited to, the CG 2692 reports of vessel casualty that were required to be filed with the Coast Guard, photographs, weather data, vessel traffic data, emergency call data, radio call data, witness statements, recorded interviews, interim reports, final reports, etc.”

4.5 The email address to which Plaintiff submitted their FOIA request was the address that the USCG promulgated for the purposes of submitting FOIA requests relating to the information sought by Stacey & Jacobsen, PLLC. Plaintiff transmitted the request to the USCG via electronic mail, a manner allowed by the USCG.

4.6 After receiving no response from the USCG to the initial request, Plaintiff again emailed the USCG on June 25, 2019.

4.7 Still receiving no response, on July 2, 2019, Plaintiff resubmitted the original FOIA request correspondence dated June 3, 2019 again by email to EFOIA@uscg.mil and requesting the USCG to “Please confirm that you have received the attached FOIA request and advise the status.” Simultaneously, Plaintiff also completed an online submission form via DHS FOIA/Privacy Act Request Submission Form. Plaintiff received an automatic submission confirmation from webpublishing@hq.dhs.gov on behalf of WCM DHS wcmmonitoring@dhs.gov.

4.8 On July 9, 2019, Plaintiff telephoned Amanda with the USCG at 202.475.3522 and left a message for her to return my call regarding our numerous requests.

4.9 Plaintiff again left a telephone message for Amanda on July 16, 2019.

1 4.10 On August 4, 2019, Plaintiff called Amanda again and also faxed the request
2 at 202.372.8413.

3 4.11 On August 5, 2019, Plaintiff again emailed EFOIA@uscg.com requesting the
4 USCG to “Again, please respond to this request!”
5

6 4.12 On August 19, 2019, Plaintiff sent correspondence to the Coast Guard via
7 email and U. S. Mail at the following address:

8 ***Via US Mail and***
9 ***Email EFOIA@uscg.mil***

10 COMMANDANT (CG-611)
11 ATTN FOIA OFFICER
12 2703 Martin Luther King Jr. Ave SE
13 Washington DC 20593-7710

14 stating “To date, we still have not received a response from you to our FOIA request. Please
15 be advised that we intend to file suit in the United States District Court for the Western District
16 of Washington against the United States Coast Guard in violation of FOIA.” Plaintiff also
17 emailed the August 19, 2019 correspondence and email to Kenneth D. Mitchell at
18 kenneth.D.Mitchell@uscg.mil and Jonathan A. Griffie at Jonathan.A.Griffith@uscg.mil
19 requesting “Please see attached. Immediate attention requested.”

20 4.13 On August 26, 2019, Plaintiff received an email from Myra Miller, FOIA
21 Analyst, in response to our August 5, 2019 email advising “Your FOIA request has been
22 received. The request number is 2019-CGFO-01822. For updated on your request please
23 contact Thelma Flood at (202) 372.1284.”

24 4.14 On August 27, 2019, Plaintiff received an email from Thelma Flood, CG-DCO
25 Directorate FOIA Coordinator, advising “Our office (CG-INV-3) is in receipt of your
26 Freedom of Information Act (FOIA) request for information pertaining to the vessels DAUBY

1 / WN2263SJ. Your request was assigned to Ms. Myisha King for processing. Please reach
2 out to her at (202) 372-1042 and provide her with the FOIA number associated with your
3 request for tracking purposes. Your FOIA number is 2019-CGFO-01822. I have cc'd Ms.
4 King on this email so she may also reach out to you with a status update of your request.”
5

6 4.15 On August 28, 2019, Plaintiff received an email from Jonathan Griffie, CG-
7 611 FOIA Consultant, advising “I apologize for the fact that you have been unable to reach
8 anyone regarding this request. Our records show it was entered into our system, and assigned
9 a case number, 2019-CGFO-01822, on June 6, 2019. It is currently assigned to CG-INV-3
10 for processing. Our records also show acknowledgment emails were sent from our case
11 management software to this address on June 6th and July 11th, however, we have been
12 experiencing issues with emails sent from our case management software being received, I
13 will attempt to send the email again directly from my email address instead of the FOIA
14 software. For further information on the status of 2019-CGFO-01822 I must refer you to the
15 FOIA contact person for CG-INV-3, Thelma Flood. Ms. Flood can be reached at
16 Thelma.R.Flood@uscg.mil or (202) 372-1284. If you are unable to reach Ms. Flood, Dawn
17 Patterson of the office may able to assist you as well, she can be reached at
18 Dawn.Patterson@uscg.mil or (202) 372-1282. Once again I apologize for the delay in
19 response to your attempts to contact our office, if you need further assistance please feel free
20 to contact me at this address” in response to our August 19, 2019 email.
21
22

23 4.16 On August 28, 2019, Plaintiff received another email from Jonathan Griffie,
24 CG-611 FOIA Consultant, advising “This acknowledges receipt of your June 03, 2019,
25 Freedom of Information Act (FOIA) request to the U.S. Coast Guard (USCG). Your request
26 was received on June 06, 2019 and has been assigned FOIA[PA] number 2019-CGFO-01822.

1 We have queried the appropriate component of the USCG for responsive records. If any
2 responsive records are located, they will be reviewed for determination of
3 releasability. Please be assured that one of the processors in our office will respond to your
4 request as expeditiously as possible. We appreciate your patience as we proceed with your
5 request. You may check the status of your request by entering FOIA[PA] request
6 number 2019-CGFO-01822 into the following site: <http://www.dhs.gov/foia-status>. Request
7 status is updated and refreshed on a nightly basis electronically. You may contact this
8 office via telephone at 202-475-3522 or via email at EFOIA@uscg.mil if you have any
9 further questions.”

11 4.17 On September 5, 2019, Plaintiff spoke with Myisha King and she advised the
12 request would be fulfilled in about thirty days but she would try to get it out as soon as
13 possible; they were backlogged.

15 4.18 On September 25, 2019, Plaintiff emailed Myisha King, CTR to “Please advise
16 when we may expect a response to our FOIA request No. 2019-CGFO-01822 originally
17 submitted on June 3, 2019. Thank you in advance for your kind attention to this request.”

19 4.19 Between September 25, 2019, and October 7, 2019, Plaintiff telephoned
20 Myisha King at (202) 372-1042 and left voice messages for her to return the call.

22 4.20 And finally, on October 7, 2019, Plaintiff emailed Myisha King, CTR, and cc’d
23 Thelma Flood, Jonathan Griffie, and Kenneth Mitchell that “We still have not received the
24 records we requested on June 3, 2019. Attached is a copy of our correspondence for your
25 review. Please advise when we may expect a response to our FOIA request No. 2019-CGFO-
26 01822. Thank you in advance for your immediate attention to this request.”

1 4.21 As of the date of this Complaint, the USCG has failed to produce any records
2 responsive to Plaintiff's June 3, 2019 FOIA request emailed to the USCG on June 4, 2019 or
3 to demonstrate that the response records are exempt from production.
4

5 4.22 Plaintiff has a need for the records requested in order to pursue a claim for
6 maritime personal injuries on behalf of its clients Kevin and Jacob Gregory before all
7 applicable statutes of limitations expire.

8 4.23 Because the USCG has failed to comply with the time limit set forth in 5 U.S.C.
9 § 552(a)(6)(A)(i), Plaintiff is deemed to have exhausted any and all administrative remedies
10 with respect to the June 3, 2019 FOIA request per 5 U.S.C. § 552(a)(6)(C).
11

12 V. CLAIM FOR RELIEF

13 (Violation of FOIA 5 U.S.C. § 552)

14 5.1 Plaintiff incorporates paragraphs 1.1 through 4.21 as if pled verbatim herein.

15 5.2 The failure of Defendants to promptly make available the records sought by
16 the FOIA request violates 5 U.S.C. § 552.

17 5.3 Plaintiff is being irreparably harmed by reason of Defendants' unlawful
18 withholding of requested records, and Plaintiff will continue to be irreparably harmed unless
19 Defendants are compelled to confirm its conduct to the law's requirements.
20

21 VI. DEMAND FOR RELIEF

22 6.1 Plaintiff hereby respectfully demands:

23 A. That the Court order the USCG to conduct a search for any and all records
24 responsive to Plaintiff's June 3, 2019 FOIA request and demonstrate that it employed search
25 methods reasonably likely to lead to the discovery of records responsive to Plaintiff's June 3,
26 FOIA request;

1 B. Order Defendants to produce, by a certain date, any and all non-exempt records
2 responsive to Plaintiff's June 3, 2019 FOIA request and an index of any responsive records
3 withheld under a claim of exemption;
4

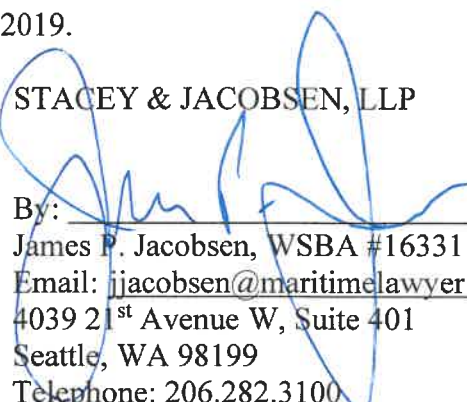
5 C. Enjoin Defendants from continuing to withhold any and all non-exempt
6 records responsive to Plaintiff's June 3, 2019 FOIA request;

7 D. Award Plaintiff's costs, attorney's fees, and other reasonable expenses
8 pursuant to 5 U.S.C. § 552(a)(4)(E); and

9 E. Award Plaintiff's additional relief as the Court deems just and equitable.

10 DATED this 11 day of October, 2019.

11 STACEY & JACOBSEN, LLP
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